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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 JOEL M. CRAM, MINH D. NGUYEN, and
11 ROES 1 through 10, individually, and on
behalf of all others similarly situated,

12 Plaintiffs,

13 vs.

14 ELECTRONIC DATA SYSTEMS
15 CORPORATION, a Delaware
16 corporation, and DOES 1 through 100,
inclusive,

17 Defendants.

CASE NO. 07cv1842-LAB (NLS)

**ORDER OVERRULING
PLAINTIFFS' OBJECTIONS TO
ORDER AWARDING
ATTORNEYS' FEES**

[Dkt No. 75]

18 By Order entered January 8, 2008, Magistrate Judge Nita L. Stormes granted
19 defendant Electronic Data Systems Corporation's ("EDS") request for an award of its
20 attorneys' fees, sought and substantiated in the amount of \$2,956.00, incurred to oppose
21 plaintiffs' unsuccessful Motion To Compel EDS to provide supplemental responses to
22 interrogatories.¹ Dkt No. 72. Judge Stormes had authorized expedited jurisdictional
23 discovery regarding the amount in controversy in this putative class action EDS had removed
24 to federal court pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)
25

26 ¹ EDS represented, in seeking its expenses incurred to oppose the discovery motion, it had
27 discounted its requested award to an amount less than its actual expenses in consideration of
28 plaintiffs' "status as individuals and Plaintiffs' counsel's status as a solo practitioner." Dkt No. 72,
4:13-20, *quoting* the Declaration of Gregory Mersol in support of the fee request. Plaintiffs assert
no objection to the amount of the award, which Judge Stormes expressly found to be "reasonable."
Dkt No. 72, 4:20.

1 ("CAFA"). Dkt No. 18. In awarding attorneys' fees reimbursement pursuant to FED. R. CIV.
 2 P. ("Rule") 37(a)(4)(B), Judge Stormes rejected plaintiffs' argument their Motion To Compel
 3 was substantially justified.²

4 Plaintiffs have timely filed Objections to Judge Stormes' Order asking this court to
 5 "review . . . the question whether Plaintiffs' prior Motion to Compel Interrogatory Answers
 6 was substantially justified, or whether other circumstances make an award [of the opposing
 7 party's expenses] unjust." Dkt No. 75, 2:14-16. A district judge shall consider objections to
 8 magistrate judge orders deciding non-dispositive matters "and shall modify or set aside any
 9 portion of the magistrate judge's order found to be erroneous or contrary to law." Rule 72(a).
 10 This court's Standing Order prescribes it will review such objections, then determine whether
 11 additional briefing or a hearing is needed. Standing Order In Civil Cases ¶ 9. For the
 12 reasons discussed below, the court finds no error in the challenged Order and no need for
 13 additional briefing or a hearing before overruling plaintiffs' Objections.

14 After the authorized jurisdictional discovery was completed, plaintiffs moved to compel
 15 EDS to provide a valuation of the injunctive relief portion of the Complaint claims. They
 16 contended EDS' interrogatory responses were incomplete because their calculations
 17 addressed only the monetary damages and wage penalties values placed in controversy by
 18 the Complaint, even though the responses demonstrated plaintiffs' claims more likely than
 19 not well exceeded the CAFA jurisdictional threshold. Plaintiffs also objected EDS relied on
 20 calculations from its personnel and business records they insist are inadequately
 21 authenticated, so the interrogatory responses and supplemental responses are purportedly
 22 "inadmissible evidence," further justifying the Motion To Compel a valuation of the injunctive
 23

24 ² The court *sua sponte* notes that prior to an amendment effective December 1, 2007, the
 25 pertinent Rule (and the version relied on by plaintiffs and in the challenged Order) provided: "If the
 26 motion is denied, the court . . . shall, after affording an opportunity to be heard, require the moving
 27 party or the attorney filing the motion or both of them to pay to the party or deponent who opposed
 28 the motion the reasonable expenses incurred in opposing the motion, including attorney's fees,
 unless the court finds that the making of the motion was substantially justified or that other
 circumstances make an award of expenses unjust." Rule 37(a)(4)(B). The current version of the
 Rule appears to strengthen the option to not award fees by adding mandatory language (*i.e.* "must
 not order this payment") associated with the grounds for denial of a fee award. See below. Even
 under the current version of the Rule, this court overrules plaintiffs' objections.

1 relief portion of their claims. Judge Stormes rejected both justifications in denying the motion
 2 and awarding EDS its costs to oppose the motion. This court has elsewhere addressed
 3 plaintiffs' dubious insistence EDS' verified interrogatory responses are "inadmissible" in the
 4 context of this threshold jurisdictional inquiry.

5 Under the amendments effective December 1, 2007, awards of attorneys' fees to an
 6 opposing party when a motion to compel disclosures or discovery is denied are governed
 7 by Rule 37(5)(B), which provides in pertinent part (emphasis added):

8 (B) If the Motion Is Denied. If the motion is denied, the
 9 court . . . **must, after giving an opportunity to be heard,**
 10 **require the movant, the attorney filing the motion, or both to**
 11 **pay the party . . . who opposed the motion its reasonable**
 12 **expenses incurred in opposing the motion, including**
 13 **attorney's fees.** But the court **must not order this payment if**
 14 **the motion was substantially justified** or other circumstances
 15 make an award of expenses unjust.

16 An award of expenses to a party successfully opposing a motion to compel discovery
 17 is thus mandatory in the absence of "substantial justification" for bringing the motion. In their
 18 Objections to Judge Stormes' Order, plaintiffs defend their motion on grounds they
 19 "reasonably believed that EDS' interrogatory responses were inadmissible." Dkt No. 75, 4:9-
 20 10. Plaintiffs fail to appreciate the procedural posture of the case and the purpose of the
 21 expedited, narrowly-tailored discovery Judge Stormes authorized. As elaborated in her
 22 challenged Order, and by this court in denying plaintiffs' motions to remand and for curative
 23 communication with putative class, the sole discovery objective at this preliminary phase of
 24 the litigation was to inform the question whether remand to state court was necessary due
 25 to a failure of proof EDS could likely satisfy the CAFA amount in controversy based on the
 26 Complaint allegations, and solely through interrogatories limited to ten per side.

27 EDS responded to the authorized interrogatories based on the salaries, the likely
 28 overtime compensation should putative class members prevail, and waiting penalty
 calculations to arrive at a sum in excess of \$7 million placed in controversy by the Complaint
 allegations. As noted by Judge Stormes, there was no substantial justification for plaintiffs
 to seek a court Order to compel EDS also to place a value on plaintiffs' equitable relief

1 theories, inasmuch as EDS substantiated from their actual damages and penalty allegations
 2 alone the \$5 million threshold is likely amply surpassed for purposes of supporting CAFA
 3 removal. In an attempt to avoid the expenses award, plaintiffs argue "EDS would have [had]
 4 to disclose facts from which the Court would conclude that the cost of injunctive relief would
 5 be nil" (Dkt No. 75, 4:6-7), an unsubstantiated observation having no bearing on the question
 6 presented and reinforcing the superfluousness of plaintiffs' Motion To Compel. In denying
 7 the Motion To Compel, Judge Stormes concluded there was no need to require EDS to
 8 produce any additional information to inform the question whether the Complaint allegations
 9 place in controversy at least \$5 million.

10 In objecting to the costs award, plaintiffs unpersuasively attempt to bootstrap their
 11 successful *ex parte* application seeking *leave to conduct* limited jurisdictional discovery (Dkt
 12 No. 18) into "substantial justification" or some other "circumstance" that would make the
 13 expenses reimbursement award for the bringing of their *unsuccessful Motion To Compel*
 14 unjust. Dkt No. 75, 3:1-2 ("The Magistrate Judge erred because Plaintiffs prevailed on the
 15 *ex parte* application which resulted in the entry of the Order of 3 October 2007"). The
 16 issues associated with the *ex parte* application and the considerations and consequences
 17 associated with the Motion To Compel are separate and distinct, temporally, substantively,
 18 and legally.

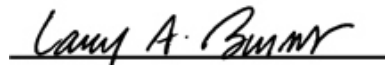
19 Absent substantial justification or some special circumstance, an Order for the
 20 recovery of costs incurred to oppose an unnecessary discovery motion is appropriate, and
 21 is in fact mandated even in the absence of any wrongful conduct. See Rule 37(5)(B); see
 22 also Reygo Pacific Corp. v. Johnston Pump Co., 680 F.2d 647, 649 (9th Cir. 1982), *implied*
 23 *overruling on other grounds recognized by* Molski v. Evergreen Dynasty, Inc., 500 F.3d 1047,
 24 1055 n.2 (9th Cir. 2007). In authorizing limited jurisdictional discovery, Judge Stormes had
 25 emphasized EDS' only burden was to make a showing based on the Complaint allegations
 26 it is more likely than not the amount placed in controversy exceeds the CAFA threshold. Dkt
 27 No. 18, pp. 6-7, *citing* Singer v. State Farm Mut. Auto Ins. Co., 116 F.3d 373, 376 (9th Cir.
 28 1997), Sanchez v. Monumental Life ins. Co., 102 F.3d 398, 404 (9th Cir. 1996). EDS was

1 not required to produce any records to prove or disprove liability to putative class members
2 or their potential recovery under any particular theory at this stage of the litigation. Plaintiffs'
3 Motion To Compel unnecessarily sought to expand the scope of the authorized discovery.

4 In summary, after *de novo* review, the court finds Judge Stormes reasonably
5 concluded plaintiffs' Motion To Compel was not meritorious. Her Order awarding EDS its
6 expenses to oppose the motion is neither clearly erroneous nor contrary to law. Accordingly,
7 plaintiffs' Objections to the Rule 37 award of attorneys fees to EDS are **OVERRULED**, and
8 the court declines to disturb Judge Stormes' January 8, 2008 Order.

9 **IT IS SO ORDERED.**

10 DATED: January 23, 2008

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12 **HONORABLE LARRY ALAN BURNS**
13 United States District Judge
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